

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In Re:)	
)	
Applications filed for the Transfer of Control)	WC Docket 10-260
of the Licensees of TeleGuam Holdings,)	
LLC to AP TeleGuam Holdings, LLC)	
)	
)	
)	

Comments of Pacific Data Systems

Pacific Data Systems (“PDS”), a telecommunications carrier providing service in Guam, the Commonwealth of the Northern Marianas, and Hawaii, submits these comments in response to the January 10, 2011 Public Notice issued by the Commission, DA 11-40. The Public Notice briefly describes how GTA Telecom, LLC (“GTA Telecom”), GTA Services, LLC (“GTA Services”), and Pulse Mobile, LLC (“Pulse Mobile”) (collectively, “TeleGuam Licensees”), Shamrock TeleGuam Holdings, LLC (“Shamrock”), and AP TeleGuam Holdings, Inc. (“AP TG” or “Purchaser”) (collectively, “Applicants”) filed a series of applications pursuant to sections 214 and 310(d) of the Communications Act of 1934, as amended (Act), 47 U.S.C. §§ 214, 310(d), seeking approval for the indirect transfer of control of the TeleGuam Licensees to AP TG. GTA Telecom is the incumbent local exchange carrier (“ILEC”) in Guam. AP TG apparently would be owned primarily by three Japanese private equity funds under the Advantage Partners umbrella if the transaction receives all necessary regulatory approvals.

An application seeking approval of the same transaction was filed with the Guam Public Utilities Commission (“GPUC”) on November 19, 2010. Initially, only GTA Telecom and its parent TeleGuam Holdings, LLC (“TeleGuam”) were listed as the “Joint

Applicants” in the GPUC Application, while AP TG, the Purchaser, was not listed as a Joint Applicant.¹ Moreover, the discussion of the Purchaser in the Public Interest Considerations section of the GPUC Application was limited to a single vague assertion that “Purchaser plans to continue and accelerate GTA’s competitive service offerings.”² The ownership chart for AP TG provided in the GPUC Application was misleading to the extent that it indicated that AP TG would be solely owned by a single Advantage Partners private equity fund, instead of the three funds disclosed in the FCC applications. In the GPUC Application, it was as if Purchaser’s role in owning and managing the Company should be of no concern to the GPUC or to those in Guam, like PDS, that rely on the ILEC’s facilities and services.

Despite the sparse information provided in the GPUC Application, the GPUC granted the transfer of the Guam ILEC by Order dated November 29, 2010. This was just ten days after the GPUC Application was filed, and the ten-day period included two weekends and the Thanksgiving holiday, leaving the GPUC just four full workdays to review the Joint Application and prepare its November 29 Order. The GPUC issued the grant without providing public notice or an opportunity for comment as required by Guam Statute.³

PDS and others filed petitions seeking rehearing of the GPUC’s precipitous grant; and the GPUC responded by issuing a public notice setting January 24, 2001 as the date for interested parties to file written comments, holding a public hearing on January 27,

¹ As discussed below, in response to a GPUC order, the Purchaser eventually joined the GPUC Application.

² Joint Application, GTA Docket No. 10-09, November 19, 2010, page 7 of 10, lines 10-12.

³ See 12 GCA §§ 12103(c) and (g).

and requiring the Purchaser to join the GPUC Application as a party. PDS filed comments with the GPUC when provided the opportunity and attaches to this filing a copy of its comments and hereby incorporates them by reference.

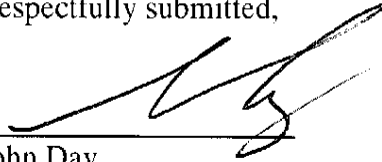
Despite the GPUC's new willingness to accept comments and hold a public hearing, PDS is still concerned whether the GPUC is providing appropriate scrutiny to the proposed transaction. PDS's concern is underscored by a recent development that has come to light since PDS filed its written comments with the GPUC. An affiliate of Advantage Partners, the Japanese private equity group that controls the proposed Purchaser, apparently is defaulting on some loans related to Tokyo Star Bank Ltd.⁴ The statement by the spokesperson for TeleGuam that "[e]ach investment [of Advantage Partners] is managed separately" is not reassuring, but rather calls for close scrutiny of the details of the proposed transaction, including whether the Purchaser is taking on too much debt. AP TG repeatedly references its "strong financial backing," and it should be required to reconcile this statement with the fact that each Advantage Partners investment is managed separately. The Pacific Region already has experienced the bankruptcy of one ILEC after its purchase by a prominent, and otherwise very successful, private equity group that apparently kept its investments separate;⁵ and the region does not need another.

⁴ See Wall Street Journal online, January 12, 2011, Advantage Partners Nears Default on Tokyo Star, accessed at: <http://online.wsj.com/article/SB10001424052748704624504576098943301942456.html>.

⁵ See Wall Street Journal online, December 2, 2008, <http://online.wsj.com/article/SB122816620702669991.html>.

Finally, the FCC applications, as well as the GPUC Application, tout the experience and managerial expertise of the TeleGuam Licensees. As explained in PDS's attached comments to the GPUC, however, the TeleGuam Licensees have impeded local exchange competition in Guam by offering ILEC services outside of the ILEC tariff and at below cost rates. In particular, in the PDS Interconnection Agreement ("ICA") with GTA Telecom the lowest rate that GTA Telecom was willing to agree to for a two-wire analog unbundled network element ("UNE") was \$30 per month; yet GTA Telecom offers an equivalent two-wire analog service to residential customers for just \$14 per month. Fair competition for residential service will never come to Guam if GTA Telecom's current management is allowed to continue these anti-competitive practices and refuse to conduct a TELRIC rate study and establish cost-based rates.

Respectfully submitted,



John Day
President

Pacific Data Systems
185 Ilipog Drive
HBC Suite 204A
Tamuning, Guam 96913

February 9, 2011



January 24, 2011

Mr. Fred Horecky
Guam Public Utilities Commission
Suite 207 GCIC Building
414 West Soledad Avenue
Hagatna, GU 96910

**RE: Public comments regarding Joint Application of TeleGuam Holding,
GTA Docket 10-09**

Dear Mr. Horecky:

Pacific Data Systems (“PDS”) hereby responds to the December 22, 2010, Public Notice soliciting comments on the above-captioned Joint Application by TeleGuam Holdings, LLC (“TeleGuam”) and its wholly-owned direct subsidiary GTA Telecom, LLC (“GTA”). The Joint Application seeks approval from the Guam Public Utility Commission (“GPUC” or “Commission”) for AP TeleGuam Holdings, Inc. (“Purchaser”) to acquire direct control of TeleGuam and indirect control of GTA, the incumbent local exchange carrier (“ILEC”) in Guam. To provide the requested approval, under Guam statute the Commission must make two findings: “(1) The applicant possesses sufficient technical, financial, and managerial resources and abilities to provide the telecommunications services in Guam for which it seeks a certificate of authority; and (2) The granting of a certificate of authority to the applicant would not be contrary to the public interest.”¹

PDS is concerned that the Commission may not be providing the appropriate level of scrutiny to the proposed transaction to make the required findings. The Joint Application was filed November 19, 2010, and the Commission purported to grant it by Order dated November

¹ 12 GCA § 12103(c).



29, 2010, without providing the public appropriate notice or an opportunity for comment as required by Guam Statute.² The ten-day period that the Commission initially took to consider the Joint Application included two weekends and the Thanksgiving holiday, leaving the Commission just four full workdays to review the Joint Application and prepare its November 29 Order. As PDS demonstrated in its December 9, 2010, filing, the failure of the Commission to comply with the public notice provisions of 5 GCA § 8107 voided the purported grant. In any event, the Commission did not need to rush. By statute the Commission has as many as 120 days to approve or deny an application for transfer of control of a telecommunications carrier subject to its jurisdiction.³ Although the Joint Applicants requested expedited approval, they provided no rationale to justify the need for the Commission to rush its approval after just four full working days of review. Indeed, the Commission's November 29 Order notes that the proposed transactions cannot be consummated until after the Federal Communications Commission ("FCC") has provided its prior approval; and at the time the GPUC Order was issued the Joint Applicants had not even filed the necessary applications with the FCC.⁴

As the Joint Application acknowledges, GTA is the "carrier of last resort" in Guam; and "[a]ll telecommunications carriers on Guam use the Company's services."⁵ For these reasons the Joint Application must be given serious and detailed Commission review, but the public record

² See 12 GCA §§ 12103(c) and (g).

³ 12 GCA § 12103(g).

⁴ Applications with the FCC were not filed until almost three weeks after the Commission's November 29, grant, on December 16, 2010, under IBFS File Nos. ITC-T/C-20101216-00478, ITC-T/C-20101216-00486, and ISP-PDR-20101216-00021 and ULS File No. 0004531711.

⁵ Joint Application at page 8 of 10, lines 21-26.



does not include sufficient information to conclude that the Purchaser meets the statutory requirement that it “possesses sufficient technical, financial, and managerial resources and abilities.”⁶ Even if the Commission finds the Purchaser to satisfy the minimum statutory requirements; however, it should condition the approval as discussed below in order to remedy ongoing deficiencies in the Company’s operations.

I. The Joint Application Is Incomplete And Must Be Amended As The Ownership Structure Described Is Inconsistent With The Ownership Information Provided To The FCC

As the caption to the Joint Application indicates, only the preexisting companies TeleGuam Holding, LLC (“TeleGuam”) and GTA Telecom, LLC (“GTA”) (together, “the Company”) are the listed “Joint Applicants,” while AP TeleGuam Holdings, Inc. (“Purchaser”) initially was not listed as a Joint Applicant. Moreover, the discussion of the Purchaser in the Public Interest Considerations section of the Joint Application is limited to a single vague and unsupported assertion that “Purchaser plans to continue and accelerate GTA’s competitive service offerings.”⁷ Purchaser did not even include its own verification that the contents of the Joint Application were true and correct. It is as if Purchaser’s role in owning and managing the Company should be of no concern to the Commission or to those that rely on GTA’s facilities and services. Indeed, it was only on January 12, 2011 -- after Administrative Law Judge Horecky issued his Preliminary Order dated January 5, 2011 -- that the Purchaser first entered an

⁶ 12 GCA § 12103(c).

⁷ *Id.* at page 7 of 10, lines 10-12.



appearance in this proceeding and verified that the information contained in the GTA Response to Information Requests filed with the Commission on November 24, 2010, was true and correct.⁸

It was not until its January 12, 2011, filings in Docket No. 10-09 that AP TeleGuam Holdings first disclosed in a public GPUC filing that its proposed ownership structure differs from that described in the Joint Application. The text of the Joint Application states only that “AP TeleGuam Holdings, Inc. (“Purchaser”) is a subsidiary of Advantage Partners IV, ILP (Only for Qualified Institutional Investors (with Resale Restriction to Non-qualified Institutional Investors) and for a Small Number of Other Investors) [hereinafter “Advantage Partners IV, ILP”].”⁹ Moreover, Exhibit A to the Joint Application includes a diagram of the “Post-Transaction Ownership Structure of the Applicants” that indicates that Advantage Partners IV, ILP will be the *sole* owner of AP TeleGuam Holdings, LLC (“Purchaser”).

In contrast, the applications submitted to the FCC for the same transaction describe a much more complicated ownership structure in which Advantage Partners IV, ILP will have less than a 50 percent ownership interest in the Purchaser.¹⁰ The reasons underlying the Joint Applicants’ failure to provide accurate ownership information at the outset or to provide complete updated information in a publicly available document should be scrutinized by the Commission. At a minimum, the Joint Applicants should be required to amend the Joint Application in a publicly available document to disclose the entire proposed post-transaction

⁸ See Notice of Appearance and Joinder in Joint Application, Docket No. 10-09, filed January 12, 2011; Certification Statement of AP TeleGuam Holding, Inc., Docket No. 10-09, filed January 12, 2011. To PDS’s knowledge, Purchaser still has not individually verified the accuracy of the November 19 Joint Application.

⁹ Joint Application, page 2 of 10, lines 23-25.

¹⁰ See Exhibit A to this filing, which is the post-transaction ownership chart that is included in FCC applications ITC-TC-20101216-00478 and ITC-TC-20101216-00486.



ownership structure and to provide additional detail about each of the proposed direct and indirect shareholders of AP TeleGuam Holdings, LLC (“Purchaser”).¹¹

Additionally, because Advantage Partners IV, ILP apparently will not have majority ownership of AP TeleGuam Holdings, LLC (“Purchaser”), the Commission should require detailed information about the relationship among Purchaser, Purchaser’s various shareholders, TeleGuam and GTA, including (a) the proposed governance of Purchaser; (b) whether Purchaser will become directly involved in the management of TeleGuam and GTA, including day-to-day operations; and (c) what role each of the Purchaser’s shareholders will have in setting policies or in making or approving spending and investment decisions.

The Joint Application states that companies in the Advantage IV, ILP portfolio include both private and publicly traded firms in various market segments including finance/services, consumer products and manufacturing. Notably absent is any reference to experience in the field of regulated telecommunications service. The Joint Application states, however, that the Company’s existing management team “will be supplemented by the management team of Purchaser,”¹² and it cites the “extensive management consulting experience of Advantage Partners LLP.”¹³ The Joint Applicants thus should be required to provide more information about the role that will be played by Advantage Partners LLP.

¹¹ The GTA Responses to Information Requests filed November 24, 2010 and cited in the PUC Counsel Report have not been made publicly available to PDS’s knowledge.

¹² *Id.* at page 5 of 10, lines 7-8.

¹³ *Id.* at page 3 of 10, lines 5 to 8.



Only after this additional information about the Purchaser is submitted in the public record should the Commission deem the Joint Application complete and should the statutory timeframe for acting on the transfer application (90 days, plus another 30 days upon good cause shown and notice to the applicants) be deemed to commence.¹⁴

II. The Commission Needs To Examine The Purchaser's Financial Qualifications Closely

As mentioned above, PDS and all other telecommunications carriers in Guam rely on the Company's services, as do the residents of Guam. Thus, the financial qualifications of the Company's Purchaser must be verified. In any event, the GPUC has a statutory mandate to evaluate the financial qualifications of a proposed transferee.¹⁵

The Joint Application, however, does not provide sufficient public information to evaluate the financial qualifications of the Purchaser. Indeed, as discussed in the preceding section it is not clear who the investors in the Purchaser are. The Commission needs to conduct an appropriate investigation to assure itself that the Company will not be too highly leveraged and will have ready access to capital when needed. At a minimum the Guam Office of Public Accountability should review the financial resources of the proposed new owner. Alternatively, a disinterested accounting firm should be brought in to review the Purchaser's financial qualifications and ensure that the company is adequately capitalized with adequate reserves.

¹⁴ 12 GCA § 12103(g).

¹⁵ 12 GCA § 12103(c).



III. The Commission Should Condition Any Grant of the Transfer On The Company's Compliance With Existing GPUC Regulations and Policies

The Joint Application relies almost exclusively on the Company's current "experienced management team" as the basis upon which the Commission is asked to make the required statutory finding regarding sufficient managerial resources and abilities.¹⁶ The Joint Application also states that "GTA, as the incumbent local exchange carrier, will continue its commitment to fulfill the principles of the Guam Telecommunications Act of 2004."¹⁷ Thus, the Joint Application has squarely put into issue the Company's track record as a non-governmental regulated entity. The Commission should take this opportunity to review GTA's record as a private enterprise and require changes as appropriate.

Section 12106(c) of the Guam Telecommunications Act states that unless otherwise authorized "no telecommunications company shall provide or resell any telecommunications service unless tariffs relating to that telecommunications service have been filed." Nor shall a telecommunications company "(1) charge, demand, collect or receive a greater or less or different compensation for such service than the charges specified in its tariffs, (2) refund or remit by any means or devise any portion of the charges so specified, or (3) extend to any person any privileges or facilities or employ or enforce any classifications, terms and conditions, except as specified in such tariffs."¹⁸ GTA, however, consistently has flouted these tariffing rules,

¹⁶ See Joint Application at pages 5 of 10, lines 6-7; page 6 of 10, lines 1-3.

¹⁷ *Id.* at page 6 of 10, lines 25-26.

¹⁸ 12 GCA § 12106(c).



which are intended to prevent unreasonable discrimination and provide a level competitive playing field.

For example, GTA currently provides to end users rotary dial local exchange service outside of its tariff and at rates that are lower than any specified in its tariff, thereby impeding competition. GTA also engages in anti-competitive conduct when it regularly provides discounts on individual services to end user customers in the form of so-called “Business Service Credits.” At times these credits are so large that service essentially is provided for free for a month or more, also undercutting any competitor’s opportunity to win over customers. Similarly, GTA has abused individual case basis (“ICB”) pricing to provide services at discounted rates that competitors do not have the opportunity to match. PDS must provide all of its local services under tariff, and GTA should be held to the same standard.

The Commission should also investigate whether GTA provides service at anti-competitive rates in violation of Section 12105(d) of the Guam Telecommunications Act of 2004.¹⁹ GTA has never conducted a rate study subject to Commission oversight and public review to determine whether its end user rates are “just and reasonable” within the meaning of Section 12105(c) of the Guam Telecommunications Act. In fact, many of GTA’s end user rates appear to be below cost. For example, in the PDS Interconnection Agreement (“ICA”) with GTA, the lowest rate that GTA was willing to agree to for a two-wire analog unbundled network element (“UNE”) was \$30 per month; yet GTA offers an equivalent two-wire analog service to residential customers for just \$14 per month. Fair competition for residential service will never

¹⁹ 12 GCA § 12105(d).



come to Guam if GTA's current management is allowed to continue these anti-competitive practices and refuse to conduct a TELRIC rate study and establish cost-based rates.

The Commission also should investigate whether GTA unlawfully jointly owns transmission or switching facilities with its wholly-owned subsidiary GTA Services, which provides "unregulated" interexchange, ISP and video service. To PDS's knowledge, there often is no demarcation between ILEC GTA facilities and non-ILEC GTA Services facilities; and GTA has unreasonably refused to allow PDS to collocate even as GTA allows its subsidiary to collocate in the absence of a written, arm's-length agreement for ISP collocations. This is consistent with TeleGuam management's typical approach of paying no attention to GPUC policies and regulations until being forced to.

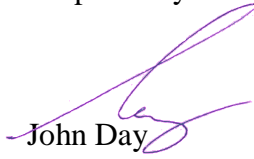
Additionally, the Commission should not credit the Joint Applicants with managerial expertise sufficient to meet the statutory requirement for a transfer until after the Commission investigates how the current management has implemented the commitments TeleGuam has made in the past. At the time of its privatization, TeleGuam committed to provide wireless Wi-Fi broadband to Guam schools, but five years later TeleGuam's commitment remains unfulfilled. Additionally, TeleGuam in 2005 had waived the rural exemption for interconnection obligations under Section 251(f)(1)(A) of the Federal Communications Act of 1934, as amended,²⁰ but then in 2008 TeleGuam tried to push through the Guam Legislature, without adequate public notice, Bill 391, which would have reinstated the rural exemption and strip the Commission going forward of its authority to decide whether to terminate the exemption. Once the public became aware of the proposed legislation, Bill 391 faced widespread opposition and did not pass.

²⁰ 47 U.S.C. § 251(f).



To ensure that the managerial track record of the Joint Applicants is appropriately reviewed prior to grant of the proposed transfer, the Commission should engage the services of the Georgetown Consulting Group to evaluate the record of the current management of the GTA with respect to complying with statutory requirements (such as tariffing and just and reasonable rates), with the GPUC regulations and orders, and with TeleGuam's previous commitments.

Respectfully submitted,



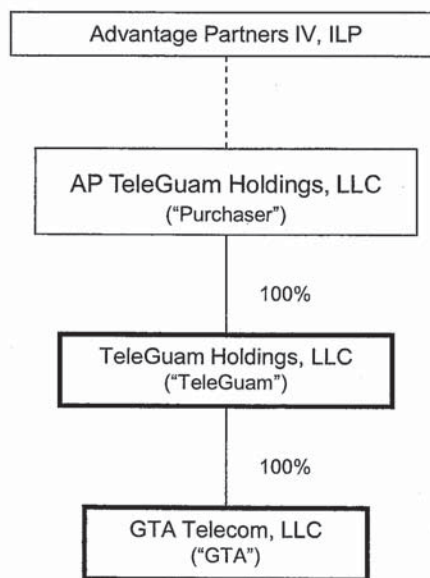
John Day
President

PDS COMMENTS EXHIBIT A

***DIFFERING POST-TRANSACTION OWNERSHIP CHARTS IN
GPUC AND FCC APPLICATIONS***

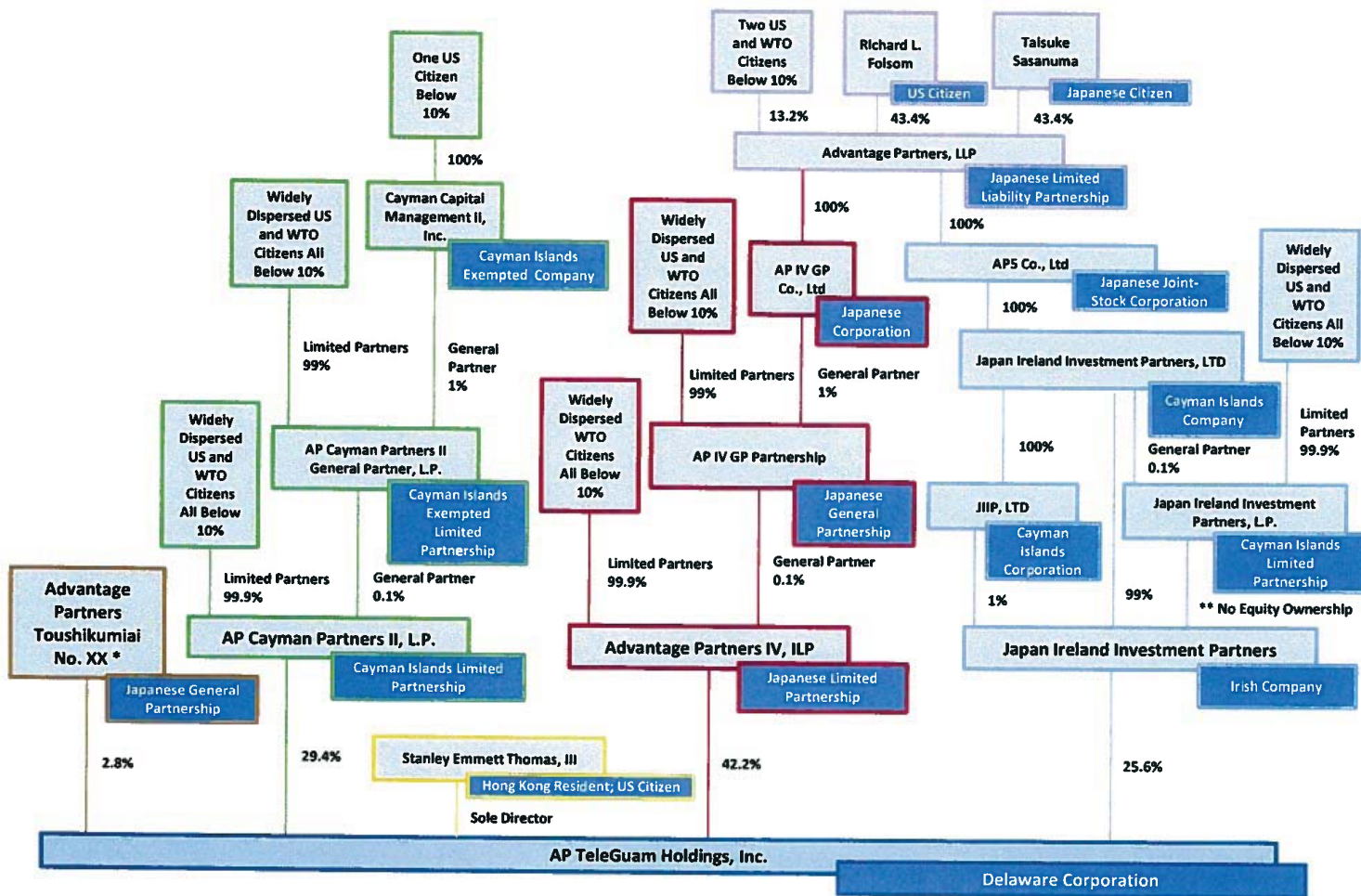
**POST-TRANSACTION OWNERSHIP CHART IN GPUC APPLICATION
DOCKET NO. 10-09**

Post-Transaction Ownership Structure of the Applicants



POST-TRANSACTION OWNERSHIP CHART IN FCC APPLICATION
IBFS FILE NO. ITC-T/C-20101216-00478

Post-Transaction Corporate Structure Chart



(*) The name of this yet-to-be-formed employee-sponsored investment partnership may change slightly prior to closing.

(**) Although no equity ownership exists, Japan Ireland Investment Partners, L.P. holds a debt interest in Japan Ireland Investment Partners, pursuant to which the limited partnership has certain priority rights vis-à-vis the equity holders.